

Hon. Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPHINA HERNANDEZ
GARETE, a/k/a Marina Flores,

Defendant.

No. CR12-163RAJ

ORDER DENYING MOTION FOR
REDUCTION OF SENTENCE

I. INTRODUCTION

This matter comes before the court on Defendant Josephina Hernandez Garete's *pro se* motion requesting a reduction in her sentence under 18 U.S.C. § 3582(c)(2), based on Amendments 782 and 788 to the United States Sentencing Guidelines ("USSG") (Dkt. #51). Plaintiff United States of America opposes the motion (Dkt. #54). The court has thoroughly considered the parties' briefing, the relevant record, and the applicable law. Being fully advised,¹ the court DENIES Ms. Hernandez Garete's motion for the reasons stated below.

II. BACKGROUND

Defendant Josephina Hernandez Garete was sentenced by this court on March 26, 2013, following her plea of guilty to one count of distribution of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), and one

¹ No party has requested it, and the court finds oral argument to be unnecessary.

1 count of money laundering, in violation of 18 U.S.C. § 1956(a)(3)(B). The
2 Indictment charged and Defendant acknowledged in her Plea Agreement that the
3 offense involved 111.3 grams of actual methamphetamine. At the time Defendant
4 was sentenced, based on this quantity of drugs, Defendant's total offense level was
5 31, her criminal history category was I, and her applicable sentencing guideline
6 range was 108 to 135 months. However, pursuant to 21 U.S.C. § 841(b)(1)(A),
7 Defendant was subject to a mandatory minimum sentence of ten years (120 months).
8 (See Plea Agreement, Dkt. #25 at 2.) Thus, Defendant's actual sentencing range was
9 120 to 135 months.

10 III. DISCUSSION

11 A. Legal Standard

12 Amendment 782 to the United States Sentencing Guidelines, which became
13 effective November 1, 2014, lowered the penalties for most drug offenses by
14 reducing most base offense levels contained in the USSG § 2D1.1 Drug Quantity
15 Table by two levels, and making other related adjustments to this Guideline. Along
16 with Amendment 782, the Sentencing Commission adopted Amendment 788, which
17 decreed that Amendment 782 may be applied retroactively to lower the sentences of
18 previously sentenced inmates. At issue in the instant motion is whether this court has
19 authority to reduce Defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2).

20 In order to qualify for a sentence reduction under 18 U.S.C. § 3582(c)(2), two
21 conditions must be met: (1) the Defendant must have been sentenced to a term of
22 imprisonment based on a sentencing range that has been lowered by a retroactively
23 applicable Guidelines amendment; and (2) the sentence reduction sought must be
24 consistent with the Sentencing Commission's applicable policy statements. *United*
25 *States v. Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (per curiam). A district court
26 does not have jurisdiction to reduce the Defendant's sentence unless both criteria are
met. See *United States v. Wesson*, 583 F.3d 728, 730 (9th Cir. 2009).

B. Defendant's Motion

Defendant's sentence was a mandatory minimum sentence rather than a sentence based on any section of the Sentencing Guidelines that subsequently has been amended. Sentence reductions are not available to defendants who have been sentenced to the applicable mandatory minimum sentence. As the Ninth Circuit has stated, "[i]t is axiomatic that a statutory minimum sentence is mandatory." *United States v. Sykes*, 658 F.3d 1140, 1146 (9th Cir. 2011). Section 5G1.1(c)(2) of the Guidelines states that a sentence "may be imposed at any point within the applicable guideline range, provided that the sentence is not less than any statutorily required minimum sentence." USSG §5G1.1(c)(2). Thus, when a defendant is subject to a mandatory minimum sentence, the sentence is never "based on a sentencing range that has subsequently been lowered by the Sentencing Commission." *United States v. Paulk*, 569 F.3d 1094, 1095 (9th Cir. 2009). Therefore, the Defendant does not qualify for a sentence reduction.

IV. CONCLUSION

For the above reasons, Defendant Josephina Hernandez Garete's *pro se* Motion to Reduce Sentence (Dkt. #51) is DENIED.

DATED this 8th day of June, 2015.


The Honorable Richard A. Jones
United States District Judge